SINGAPORE REPORT

AZIZ BIN ABDUL RAHMAN v. ATTORNEY-GENERAL, SINGAPORE

[O.C.J. (Choor Singh J.) January 31, 1979]
[Singapore — Civil Suit No. 124 of 1977]

Administrative Law — Natural justice — Breach of — Non-compliance with s. 7(2)(c) of Pensions Act (Cap. 55) — Purported retirement of plaintiff was a nullity — Pensions Act (Cap. 55), s. 7(2)(c).

Police Force — Police Inspector — Purported retirement of — On grounds of mental illness — Non-compliance with s. 7(2)(c) of Pensions Act (Cap. 55) — Breach of natural justice — Purported retirement was a nullity — Pensions Act (Cap. 55), s. 7(2)(c).

The plaintiff in this case was a police inspector in the Singapore Police Force. On December 4, 1974 he was transferred to the Woodbridge Hospital for an examination where he was detained until December 12, 1974 when he was granted leave by the said hospital at the request of his relatives. He was instructed to return to the said hospital for a review on December 18, 1974 but he never did. Instead the plaintiff tried to report for duty at the Police Reserve Unit but he was told to report to Woodbridge Hospital for a review of his mental condition and not to rejoin his Unit before then. On January 15, 1975 the plaintiff was instructed not to report for duty and to obtain from the medical Superintendent of the said hospital a certificate of fitness. The plaintiff thereafter went into hiding and stayed in Malaysia for sometime.

On April 8, 1975 the Permanent Secretary (Home Affairs) requested the Director of Medical Services to convene a Medical Board to examine the plaintiff. Attempts were made to serve notice of the said matter on the plaintiff but without success. The plaintiff failed to appear at the first meeting of the Medical Board and it was adjourned to June 3, 1975. The report of the second meeting stated, *inter alia* that the plaintiff was suffering from Paranoid Disorder and that it was likely to prove permanent and the plaintiff was therefore unfit for duty as a police officer. In his letter of June 16, 1975, the Permanent Secretary of the Ministry of Home Affairs proposed to retire the plaintiff under section 7(2)(c) of the Pensions Act "by reason of an infirmity of mind and that the infirmity is likely to be permanent". On June 28, 1975 the plaintiff's solicitors wrote to the Permanent Secretary requesting for a copy of the request to the Director of Medical Services to convene the Medical Board and a transcript of the evidence that was presented before the Board. This request was not acceded to. In a subsequent correspondence the defendant claimed that "no notes of evidence were taken during the proceedings of the Board". On August 20, 1975, the President gave his approval to retire the plaintiff under section 7(2)(c) of the Pensions Act.

The plaintiff claimed that he was denied his rights to be heard by the Medical Board and that the provisions of section 7(2)(c) of the Pensions Act were not strictly complied with.

Held: (1) the Government in the various steps it took to comply with the provisions of section 7(2)(c) had to act fairly and observe the requirements of natural justice;

(2) the action taken by the Government in shutting out the plaintiff altogether from making any representation whatever and forwarding the report of the Medical Board to the President with a request that the plaintiff be retired under section 7(2)(c) of the Pensions Act was manifestly unfair to the plaintiff. It constituted a denial of natural justice;

(3) the plaintiff was entitled to know all the evidence given before the Medical Board but the evidence was not disclosed to him on the ground that the Medical Board had made no record of it. If relevant material is not disclosed at all to a party who is potentially prejudiced by it, there is *prima facie* a breach of natural justice;

(4) the report of the Medical Board did not state what the evidence was and the President reached his decision without consideration of and in ignorance of the evidence;

(5) there was clearly a failure to comply strictly with the provisions of section 7(2)(c) of the Pensions Act. The plaintiff's retirement under the said section was a nullity and he was entitled to a declaration that he was still an Inspector in the Singapore Police Force and was entitled to be remunerated as such.

[Editorial Note: The Attorney-General appealed to the Court of Appeal (Civil Appeal No. 65 of 1978, Wee Chong Jin C.J., Kulasekaram and Chua JJ., June 26, 1979). The Court of Appeal in dismissing the appeal decided that section 7 of the Pensions Act makes no provision for the retirement of a public officer.]

Cases referred to:-

(1) *Re Godden* [1971] 3 All E.R. 20.
(2) *Surinder Singh Kanda* v. *Government of the Federation of Malaya* [1962] M.L.J. 169, 172.
(3) *Ridge* v. *Baldwin* [1964] A.C. 40, 71.
(4) *Government of Malaysia* v. *Mahan Singh* [1975] 2 M.L.J. 155.
(5) *Mahan Singh* v. *Government of Malaysia* [1978] 2 M.L.J. 133.
(6) *R.* v. *Minister of Agriculture and Fisheries* [1955] 2 Q.B. 140.
(7) *Hawks Bay Raw Milk Producers Co-operative Co. Ltd.* v. *New Zealand Milk Board* (1961) N.Z.L.R. 218.
(8) *Jeff & Ors.* v. *New Zealand Dairy Products and Marketing Board* [1967] A.C. 551.

CIVIL SUIT.

J.B. Jeyaretnam for the plaintiff.

Chao Hick Tin (Deputy Public Prosecutor) for the defendant.

Choor Singh J.: The plaintiff's claim in this action was for a declaration in respect of and for damages arising from his purported retirement from the Singapore Police Force. The plaintiff claimed a declaration that he was still an Inspector in the Singapore Police Force and entitled to be renumerated as such; alternatively, he claimed that his services had been wrongly terminated and claimed damages for wrongful termination.

The facts are these. On December 4, 1965 the plaintiff was appointed as a Recruit Police Constable to undergo training at the Police Training School and on June 1, 1966 he was promoted to the rank of Police Constable.

In the year 1967 the plaintiff was seconded for service in the Singapore Army and was promoted to the rank of second lieutenant in 1968.

On March 1, 1970 the plaintiff's services were reverted to the Singapore Police Force and he was appointed to the rank of Probationary Inspector. In 1973 the plaintiff was confirmed in the rank of Inspector.

The plaintiff claimed that on December 4, 1974 at the Police Reserve Unit II at Queenstown to which he was attached as Inspector he was forcibly abducted by officers of the Singapore Police Force and transferred to Woodbridge Hospital where he was forcibly detained against his will and against his protests that there was nothing wrong with his health and wrongly confined until December 12, 1974 when he was released. This was not admitted by the defendant who averred that on December 4, 1974 as a result of the plaintiff's abnormal behaviour and in exercise of the

power conferred under section 32 of the Mental Disorders and Treatment Act (Cap. 162) the plaintiff was brought by his officer in charge, Police Reserve Unit II and two other officers to Woodbridge Hospital for an examination. It was further averred by the defendant that no force was used by any of the officers on the plaintiff who agreed to go for examination after some persuasion by his commanding officer. Further, that as the plaintiff was suspected of suffering from mental illness he was detained for further treatment until December 12, 1974 when he was granted leave by the said hospital at the request of his uncle and brother. The plaintiff was instructed to return to the said hospital for a review on December 18, 1974 which he never did.

The plaintiff reported for duty at the Police Reserve Unit II at Queenstown on January 1, 1975 when he was told that he was granted leave for that day and was instructed to report for duty the next day to the O.C. Police Reserve Unit II which he never did. He reported for duty at Police Reserve Unit II at Queenstown on January 3, 1975 and was instructed by his commanding officer to report to the Medical Superintendent at Woodbridge Hospital for a review of his mental condition and not to rejoin his Unit before then. The plaintiff refused to seek medical treatment but continued to report for duty against the instructions of his commanding officer. On January 15, 1975 the plaintiff was instructed not to report for duty and to obtain from the Medical Superintendent of Woodbridge Hospital a certificate of fitness.

Thereafter the plaintiff went underground. He went into hiding and could not be located. The plaintiff claimed that he was depressed and stayed with friends, seldom returned home and was also for some time in Malaysia.

In the meantime, on April 8, 1975 the Permanent Secretary (Home Affairs) requested the Director of Medical Services to convene a Medical Board to examine the plaintiff. Attempts were made to serve a notice of the convening of the Medical Board on the plaintiff but without success. The plaintiff was living in Government quarters at 86 Nicoll Highway, Singapore. On the day the plaintiff was admitted to Woodbridge Hospital, his wife moved out of 86 Nicoll Highway and went to live with her mother-in-law at 94 Casuarina Road, Singapore. Notice of the convening of the Medical Board was served on the plaintiff's wife but was returned by her with a covering letter stating that she did not know the whereabouts of her husband. A notice of the convening of the Medical Board was also sent to the plaintiff's father-in-law's house at 511F, Block 13, Lor. 7, Toa Payoh but this was also returned by his father-in-law Abdul Rahman bin Abdul Karim with a covering letter stating that he did not know the whereabouts of his son-in-law.

The plaintiff failed to appear before the Medical Board which met on April 29, 1975 and it adjourned to meet again on June 3, 1975. In the meantime fresh attempts were made to serve the plaintiff with notice of the convening of the Medical Board. Notices were served at all known addresses. The plaintiff again failed to appear before the Medical Board on June 3, 1975.

The Medical Board met on June 3, 1975 and reported as follows: —

"We the undersigned Medical Officers having been constituted a Board to examine the abovenamed officer, have the honour to report as follows: —

2. We have been informed that he is to be examined because —

(a) he appears to be unfit for duty;

(b) of the reason stated here: by reason of mental illness.

3. (a) We have not examined the abovenamed officer as he did not present himself for the Medical Board on April 29, 1975 and June 3, 1975.

(b) We have not had this officer under medical observation or treatment.

(c) The history of the case, so far as we can ascertain, is as follows:

(Please see notes attached)

4. We certify that this officer is, in our opinion

(a) ....

(b) suffering from Paranoid Disorder.

5. We are of opinion that the officer's illness or disability —

(a) is likely to prove permanent;

(b) is likely to render him unfit for duty as Police Officer;

(c) is not likely to render him unfit for other employment.

6. We recommend that he should be regarded as permanently unfit for further service as a Police Officer.

7. We recommend that he should be granted leave on medical grounds as indicated below.

All leave to his entitlement.

Sd. Dr. Teo Seng Hock
Psychiatrist "G"
Woodbridge Hosp.,
Singapore 19.

Dr. P. Nagulendran
Sr. Registrar,
Woodbridge Hosp.,
Singapore 19.

Dr. Chee Kuan Tsee
Sr. Registrar,
Woodbridge Hosp.,
Singapore 19."

The Notes (Exhibit AB.53) attached to the Report of the Medical Board read as follows: —

"The history of the case, as far as we can ascertain, is as follows: —

Inspector Aziz was admitted to Woodbridge Hospital on December 4, 1974. He was alleged to have made false and malicious allegations against his superior officers and had also threatened them with bodily harm.

Observation and Examination in Woodbridge Hospital revealed that he was suffering from a Paranoid Disorder, characterised by delusions of persecution. He had no insight at all into his illness. He was treated with injection Modecate and was sent home on leave on December 12, 1974 in the care of his uncle and brother. He was requested to continue follow up treatment as an outpatient which he never did. The prognosis for complete recovery is likely to be very poor.

The Medical Board comprising of

(1) Dr. Teo Seng Hock, Psychiatrist Grade G

(2) Dr. Chee Kuan Tsee, Senior Registrar

(3) Dr. R. Nagulendran, Senior Registrar

was not able to examine Inspector Aziz as he did not present himself as requested on April 29, 1975 and June 3, 1975.

The Medical Board based its conclusions on

(1) Medical evidence presented by Dr. Tsoi Wing Foo, Medical Superintendent/Senior Consultant Psychiatrist and Dr. Chew Seck Kee, Psychiatrist who had both treated him in Woodbridge Hospital.

(2) Evidence of Mr. Leslie Wong, AC Detachments and Mr. Yeap Theam Hock, OC PRU II.

(3) Contents of copies of letters written by Insp. Aziz.

(4) Information from the clinical case records of Insp. Aziz."

On June 16, 1975 the Permanent Secretary of the Ministry of Home Affairs wrote the following letter to the plaintiff: —

"16 Jun 75

Inspector Aziz bin Abdul Rahman
Through
OC
Police Reserve Unit II

Dear Sir

1. Please refer to my letters in this series of 11 Apr 75, 24 Apr 75 and 12 May 75.

2. A Medical Board was convened in accordance with paragraphs H128 and 129 of Instruction Manual No. 2 in the office of the Medical Superintendent, Toa Payoh Hospital (Thomson Road Hospital) to hear your case. As you did not present yourself before the Medical Board on 29 Apr 75 and 3 Jun 75, the Medical Board proceeded to determine your case in your absence.

3. The Medical Board has found you incapable of discharging the duties of a Police Officer satisfactorily by reason of an infirmity of mind and that the infirmity is likely to be permanent.

4. It is therefore proposed that you be retired under section 7(2)(c) of the Pensions Act (Cap. 55). However, before a definite decision is taken, I am to enquire whether you wish to make any representations in this respect. If you desire to be heard orally, a Senior Officer of the Police Force will be appointed to hear you and take down your representations in which event you should let me know within 7 days from the date hereof so that proper arrangements can be made. You may alternatively wish to make representations in writing in which event this must be done within 14 days from the date of this letter.

5. Kindly acknowledge receipt of this letter on the duplicate copy attached and return the said copy to me immediately.

Yours faithfully

Sgd. LUM CHOONG WAH
Ag. Permanent Secretary (Home Affairs)"

This letter was delivered to the plaintiff's wife. As soon as this letter was delivered, the plaintiff surfaced and went to see his solicitor. On June 28, 1975 his solicitor wrote the following letter to the Permanent Secretary, Ministry of Home Affairs: —

"28th June 1975

The Permanent Secretary,
Ministry of Home Affairs,
Pearl's Hill,
Singapore 2.

Dear Sir,

We have been consulted by Inspector Aziz bin Abdul Rahman of the Singapore Police Force on your letter of the 16th June 1975 and instructed to act therein on his behalf.

We are instructed by our client that he was away from Singapore and did not receive any notification addressed to him to attend before the Medical Board on the dates mentioned in your letter. Our client does not accept that he is incapable of discharging his duties by reason of any infirmity of mind. Our client would like an opportunity to challenge the evidence presented before and considered by the Medical Board before coming to its conclusion set out in paragraph 3 of your letter. Our client would also like an opportunity to call medical evidence in rebuttal of the evidence considered by the Medical Board.

Would you please let us have a copy of the request to the Director of Medical Services to convene the Medical Board and a transcript of the evidence that was presented before the Board. Thereafter our client would like an opportunity to controvert the evidence presented before the Medical Board and to call evidence on his own behalf.

Yours faithfully,
Sgd. J.B. Jeyaretnam & Co."

c.c. client

The Permanent Secretary replied as follows: —

"7 Jul 75

M/s J.B. Jeyaretnam & Co.
Advocates & Solicitors
1501-1504 Tunas Building
114 Anson Road
Singapore 2.

Gentlemen,

Inspector Abdul Aziz bin Abdul Rahman

I refer to your letter of 28 June 75.

2. As your client says that he was not in Singapore and therefore did not receive the letters addressed to him requiring him to appear before the Medical Board, kindly let me know where he was and the period during which he was away. In this respect, please let me have your client's passport for my perusal.

Yours faithfully,

Sgd. for PERMANENT SECRETARY (HOME AFFAIRS)"

On July 29, 1975, the plaintiff's solicitor wrote to the Permanent Secretary (Home Affairs) as follows: —

"29th July 1975

The Permanent Secretary (Home Affairs)
Pearl's Hill,
Singapore 2.

Dear Sir,

Inspector Aziz bin Abdul Rahman

We thank you for your letter of the 7th July and your reminder thereof dated 26th July and regret our delay in replying thereto. We have just obtained our client's instructions on your letter.

Our client instructs us that he was not at home when your Ministry's letter of the 11th April, informing him of the Medical Board, was sent to his house. He instructs us that he was staying away from his house at Yio Chu Kang. We understand that the letter was sent to his father-in-law's house and that the father-in-law sent it back to O.C. PRU II with a covering letter explaining that he had not seen his son-in-law and did not know when he would see him again. We enclose herewith xerox copy of the letter written by the father-in-law.

Either the same letter or a similar letter, we are instructed, was delivered at our client's house but our client was not in and the letter was left at the house. This letter was also returned to O.C. PRU II by the wife with a covering letter dated 15th April 1975 saying that her husband was not at home and she did not know his whereabouts. We enclose herewith a xerox copy of the wife's letter.

We are instructed by our client that he left for Malaysia on the 23rd May 1975 and was away until the 6th of June 1975. He was not in Singapore when the Medical Board met on the 3rd of June 1975. We enclose herewith xerox copies of the relevant pages from our client's Restricted Passport which show that he entered Malaysia on the 23rd May 1975 and left on the 6th of June. The relevant stamps are at page 7.

We trust you will now give our client an opportunity to appear again before the Medical Board and rebut the evidence presented to it.

Yours faithfully,
Sgd. J.B. Jeyaretnam & Co.

c.c. client"

On August 7, 1975, the Permanent Secretary (Home Affairs) requested the plaintiff to produce his passport for his perusal. On August 13, 1975 plaintiff produced his passport at the office of the Permanent Secretary.

On August 19, 1975 the Permanent Secretary (Home Affairs) wrote to the Private Secretary to the President as follows: —

"19th Aug 75

PS to President

ABDUL AZIZ BIN ABDUL RAHMAN
INSPECTOR OF POLICE

1. Abdul Aziz bin Abdul Rahman, born on 22 May 47, joined the Police Force as a Constable on 4 Dec 65. He was appointed as a Probationary Inspector of Police on 3 years' probation with effect from 1 Mar 70 and was confirmed in his appointment on 1 Mar 73. He has, to date, completed 9+ years of service.

2. Insp. Aziz was admitted to the Woodbridge Hospital on 4 Dec 74 for inpatient treatment. He was found to be suffering from a Paranoid Disorder and required psychiatric treatment. However, at the request of his relatives, he was permitted to go home on 12 Dec 74 to continue treatment as an outpatient and he was to return to the hospital on 18 Dec 74 on the expiry of his leave.

3. Insp. Aziz did not return to the Woodbridge Hospital for medical attention and, except for the period from 1 Jan 75 to 15 Feb 75, he has been absent from duty since 19 Dec 74. He is currently on full pay medical leave under paras H 169-171 of Instruction Manual No. 2.

4. A Medical Board was convened to determine whether Insp. Aziz would be fit to continue as a Police Officer. The Board sat on 29 Apr 75 and 3 Jun 75. Insp. Aziz did not present himself before the Medical Board despite repeated requests to do so. The Board therefore determined his case in his absence based on:—

(i) Medical evidence presented by the doctors who had treated Insp. Aziz at the Woodbridge Hospital;
(ii) evidence of the police;
(iii) contents of copies of letters written by Insp. Aziz; and
(iv) information from the clinical case records of Insp. Aziz.

5. The Medical Board found Insp. Aziz unfit for duty as a Police Officer and has recommended that he should be regarded as permanently unfit for further service as a Police Officer.

6. In view of the recommendation of the Medical Board, may the President's approval be obtained to retire Insp. Aziz and to pay him benefits under section 7(2)(c) of the Pensions Act, Cap. 55 of 1970 Edition.

7. The Personal File, Service Record Cards and Leave Record of the officer are attached for reference, please.

Sgd. CHARLOTTE WONG (MISS)
for PERMANENT SECRETARY (HOME AFFAIRS)

c.c.

Commissioner of Police
Secretary PSC
Attorney-General
Mr. President,

Submitted for approval, please.

PS 20 Aug 75"

"P.S.

I so approve

Sgd. B.H. Sheares
20 Aug 1975

Permanent Secretary (Home Affairs)

Please note President's approval.

Sgd.
20.8"

On August 25, 1975, the Permanent Secretary (Home Affairs) wrote to the plaintiff's solicitor as follows:—

"25th August 1975

Messrs. J.B. Jeyaretnam & Co.
Advocates & Solicitors
No. 1501-1504 Tunas Building
114 Anson Road
Singapore 2.

Gentlemen,

Inspector Aziz bin Abdul Rahman

I refer to your letter of 29 Jul 75 and regret to inform you that I am unable to accede to your request. It is clear from your client's passport that he was not away from Singapore when he was notified of the convening of the Medical Board and when the said Board first sat. He was also in Singapore when notification was given of the second sitting of the Board.

Yours faithfully,

Sgd. for PERMANENT SECRETARY (HOME AFFAIRS)"

This letter was followed by another dated August 30, 1975 which reads as follows:—

"Ministry of Home Affairs
30 August 75

Inspector Abdul Aziz bin Abdul Rahman

Through: OC Police Reserve Unit II

Dear Sir,

I refer to my letter dated 16 June 75 wherein you were informed that it was proposed that you be retired from service under Section 7(2)(c) of the Pensions Act (Cap. 55).

2. I am directed to inform you that the President, after having considered the evidence before him, has decided that you be retired from the service under Section 7(2)(c) of the Pensions Act. You are allowed, with immediate effect, to proceed on whatever leave that is due to you in accordance with relevant Government instructions and the last day of your leave will be the last day of your service. The Commissioner of Police will be requested to grant you all such leave that is due to you with effect from the date of this notice of retirement.

3. All monies due to you will be given to you after deductions, if any, of any monies owing to the Government.

4. Please acknowledge receipt on the duplicate copy of this letter which should be returned to me immediately.

Yours faithfully,

Sgd. LUM CHOONG WAH

Ag. PERMANENT SECRETARY (HOME AFFAIRS)"

The plaintiff's solicitor replied as follows:—

"7th October 1975

The Permanent Secretary,
Ministry of Home Affairs,
Pearl's Hill
Singapore 2.

Dear Sir,

re: Encik Abdul Aziz bin Abdul Rahman

Further to previous correspondence in this matter, our client has now brought in to us your letter of the 30th August 1975 informing him of the decision of the President to retire the services of our client from the Force under Section 7(2)(c) of the Pensions Act.

We have been instructed to proceed further in this matter and we shall be pleased if you will now let us have all the evidence that was adduced before the Board on which the Board recommended that our client should be retired under Section 7(2)(c) of the Pensions Act. As we have indicated earlier, our client does not accept this finding and has instructed us to consider challenging the decision. Before we act any further, we should like to look at the evidence and if we, ourselves, are satisfied that there was sufficient evidence after taking further opinion on it, then, of course, we shall advise our client accordingly.

We trust you will now let us have all the evidence adduced before the Board.

Yours faithfully,

c.c. client

Sgd. J.B. Jeyaretnam & Co."

The plaintiff's solicitors were supplied with a photostat of the "Medical Report On An Officer Locally Recruited" (Exhibit AB.52) and when they

pressed for a copy of the transcript of the evidence recorded, the defendant came into the picture and wrote to the plaintiff's solicitors on June 15, 1976 as follows: —

"15 Jun 76

M/s. J.B. Jeyaretnam & Co.
Advocates & Solicitors
No. 1501-1504 Tunas Building
114 Anson Road
Singapore 2.

Sirs,

Re: ENCIK ABDUL AZIZ BIN ABDUL RAHMAN

I refer to your request for the notes of proceedings of the Medical Board with regard to your client.

I have been informed by the Director of Medical Services that no notes of evidence were taken during the proceedings of the Board, though personal notes were taken by the three members constituting the Board. It is regretted that I am unable to supply the notes of evidence as requested.

2. You may wish to know that evidence was given by Assistant Commissioner, Mr. Leslie Wong and Superintendent of Police Mr. Yeap Theam Hock, Dr. Tsoi Wing Foo and Dr. Chew Seck Kee. The evidence of Mr. Leslie Wong and Mr. Yeap Theam Hock relates solely to the encounters which they had with your client. As for Dr. Tsoi Wing Foo and Dr. Chew Seck Kee, their evidence relates to the medical case history of your client. The various letters written by your client to the various Government authorities were also submitted as evidence.

Yours faithfully,

Sgd. FONG KWOK JEN
for ATTORNEY-GENERAL"

Not satisfied with the above reply the plaintiff's solicitors wrote on June 22, 1976 as follows: —

"22nd June 1976

The Attorney-General,
Singapore.

Dear Sir,

re: Encik Abdul Aziz bin Abdul Rahman

We thank you for your letter of the 15th June 1976. We regret your attitude in refusing to supply us with the evidence requested by us.

What we need to look at is the evidence, whether it was given viva voce or whether it was given in the form of written reports, upon which the Board came to the conclusion that our client was incapable of discharging the duties of his office and that such infirmity was likely to be permanent.

We have our client's instructions to challenge the compulsory retirement of him but we thought that before we commence proceedings we should write in for the evidence upon which the decision was taken so that we may be in a better position to advise our client. We cannot really see what objection you could have to supplying us with the evidence before the Board. As you are aware, our client was not before the Board when the evidence was received by the Board.

We shall be pleased if you will reconsider your decision.

Kindly let us hear from you as soon as possible as we first wrote to the Minister of Home Affairs on the 8th October 1975 for the evidence and we heard from you in January of this year saying that you were looking into the matter and would write to us. We have only now heard from you. Our client is anxious not to allow this matter to be protracted and we shall be pleased if you will let us have a reply before the end of this month.

Yours faithfully,

Sgd. J.B. JEYARETNAM & CO."

In the result, the plaintiff's solicitors were not supplied with a copy of the notes of evidence because it was claimed by the defendant that "no notes of evidence were taken during the proceedings of the Board". The plaintiff then issued the writ in these proceedings.

It is now necessary to look at the relevant provisions of the Pensions Act (Cap. 55). The following provisions are relevant: —

"7.—(1) No pension, gratuity or other allowance shall be granted under this Act to any officer until he shall have retired from the public service.

(2) Subject to the provisions of section 17 of this Act, no pension, gratuity or other allowance shall be granted under this Act to any officer who has retired from the public service in Singapore, unless he has retired —

(a) xxx xxx
(b) xxx xxx
(c) on a certificate from his head of department and on medical evidence to the satisfaction of the President that he is incapable, by reason of some infirmity of mind or body, of discharging the duties of his office and that such infirmity is likely to be permanent; or

9. It shall be lawful for the President to require any officer to retire from the public service in Singapore —

(a) xxx xxx
(b) xxx xxx
(c) whose retirement appears to the President to be desirable in the public interest; or"

It is clear from the correspondence passing between the Permanent Secretary of the Ministry of Home Affairs and the plaintiff's solicitors that the purported retirement of the plaintiff was under section 7(2)(c) of the Pensions Act (Cap. 55). Miss Charlotte Wong who gave evidence on behalf of the defendant and who is the author of the letter dated August 19, 1975 (AB69) affirmed that the plaintiff was retired under section 7(2)(c). Mr. Lum Choong Wah the acting Permanent Secretary (Home Affairs) also affirmed this, and this is clearly borne out by his letter dated August 30, 1975 (AB72). In the defendant's statement of defence it is claimed in paragraph 21 that the plaintiff's retirement was under section 7(2)(c) of the Pensions Act but at the hearing before me, counsel for the defendant claimed that the retirement was under section 9(c) of the said Act. I rejected this submission because a party is bound by his pleadings, and furthermore, it was clear from all the correspondence and from the minute of the President, recorded on AB70, that the retirement was approved under section 7(2)(c) of the Pensions Act. Furthermore, the plaintiff was never informed that his retirement was under section 9(c) of the Pensions Act.

The plaintiff's case was that he was denied his rights to be heard by the Medical Board and secondly, that the provisions of section 7(2)(c) of the Pensions Act were not strictly complied with.

The right to be heard was not strenuously contested by counsel for the defendant. The cases clearly support a right to be heard. In *Re Godden*[1] which was also a case of a police officer whom it was sought to retire on the ground of his mental health Lord Denning M.R. said, at page 25: —

"... When a medical practitioner is making a decision which may lead to a man being compulsorily retired, he must act fairly. He is not acting simply as doctor to patient. He is not diagnosing illness or prescribing treatment. He is not

saying merely whether a man is fit or unfit for duty. He is doing something which affects the man's whole future. Take this very case. A man's mental state is at issue. It affects not only his pension rights and payments to him. It affects his standing in the community, his ability to get other work and the like. It is quite plain to me that the person concerned is entitled to have a fair opportunity of correcting or contradicting any statements made to his prejudice, and a fair opportunity of calling in his own medical consultant and getting him to give his opinion to the deciding person. His own medical consultant should be entitled to have before him all materjal which the other doctors have . . ."

Earlier, in the case of *Surinder Singh Kanda* v. *The Government of the Federation of Malaya*,[2] Lord Denning had observed, at page 172: —

". . . If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn L.C. in *Board of Education* v. *Rice*, [1911] A.C. 179, 182, down to the decision of their Lordships' Board in *Ceylon University* v. *Fernando*, [1960] 1 W.L.R. 223. It follows of course that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The Court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The Court will not go into the likelihood of prejudice. The risk of it is enough . . . ."

In the leading English case of *Ridge* v. *Baldwin*,[3] Lord Reid in the course of a long and important judgment, emphasised that the duty to act in conformity with natural justice could, in some situations, simply be inferred from a duty to decide "what the right of an individual should be" and that where the occupant of an office was removable only for cause (e.g. inability) he had an implied right to prior notice and opportunity to be heard. Lord Reid observed at page 71: —

"The principle *audi alteram partem* goes back many centuries in our law and appears in a multitude of judgments of judges of the highest authority. In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist."

Dealing with the same difficulty, the "certain vagueness" about natural justice, Lord Hodson said in the same case, at page 114: —

"No one, I think, disputes that three features of natural justice stand out — (1) the right to be heard by an unbiased tribunal, (2) the right to have notice of charges of misconduct, (3) the right to be heard in answer to those charges."

In spite of these very strong authorities emphasising the implied duty to observe natural justice, counsel for the defendant was bold enough to rely on the decision of the Federal Court of Malaysia in *Government of Malaysia* v. *Mahan Singh*,[4] which held that an officer retired "in the public interest" under section 10(d) of the Pensions Ordinance, 1951, was not entitled to a reasonable opportunity of being heard under Article 135(2) of the Federal Constitution. I think that counsel was not aware that the decision of the Federal Court had been reversed by the Privy Council[5] which held that as the officer was "dismissed" within the meaning of that expression as used in Article 135(2) of the Constitution of Malaysia without a reasonable opportunity of being heard, his dismissal was a nullity.

It is true that the present case is not a "dismissal" case within the meaning of that expression laid down by the Privy Council in *Mahan Singh's* case and therefore the provisions of Article 135(2) of the Constitution of Malaysia (made applicable to Singapore by the Republic of Singapore Independence Act, 1965) were inapplicable. But that does not mean that the plaintiff had no rights at all. His purported retirement under section 7(2)(c) of the Pensions Act was on the ground of "incapability of discharging his duties by reason of some infirmity of the mind" and on the authorities already examined (*Godden's* case, *Kanda's* case and *Ridge* v. *Baldwin*) the Government in the various steps it took to comply with the provisions of section 7(2)(c) had to act fairly and observe the requirements of natural justice.

The plaintiff relied on a number of grounds to support his contention that in retiring him under section 7(2)(c) of the Pensions Act the Government had not acted fairly and had not observed the requirements of natural justice. First, it was claimed that he had no notice of the sitting of the Medical Board. The plaintiff stated in his evidence that he did not receive the two notices informing him of the dates on which the Medical Board sat. He stated that after his release from Woodbridge Hospital he tried to go back to work but was not allowed to do so by his commanding officer. He then went into hiding because he did not want to be bothered by his relatives and friends. He wanted to be alone and get away from his relatives who he feared would come and ask him if he was mad. He claimed that he did not communicate with his wife from April 1, 1975 to June 8, 1975 the period during which the notices of the convening of the Medical Board were left with his wife.

I found it difficult to believe that the plaintiff had no contact with his wife during the relevant period. The plaintiff had a child hardly a year old and his wife was pregnant and expecting another child, and it is inconceivable that he did not get in touch with his wife during the period the notices regarding the convening of the Medical Board were left with his wife. In my opinion the plaintiff knew that a Medical Board was going to be held and he deliberately refrained from appearing before it.

The next ground relied upon was that after the Medical Board had made its determination, Mr. Lum Choong Wah, the Acting Permanent Secretary (Home Affairs) had in his letter dated June 16, 1975 (AB60) offered the plaintiff the opportunity to be heard and to make representations before further action was taken to retire him under section 7(2)(c) of the Pensions Act, and that when the plaintiff accepted the offer and asked for an opportunity to controvert the evidence presented before the Medical Board and to call evidence on his own behalf, Mr. Lum had unfairly withdrawn the offer and thereby deprived the plaintiff of an opportunity to be heard. It was contended that the withdrawal of the offer was a breach of the requirements of natural justice.

Mr. Lum's explanation was that on inspection of the plaintiff's passport it was discovered that the plaintiff was in Singapore on the dates on which the Medical Board sat and determined his case. He admitted under cross-examination that if the plaintiff had not been in Singapore on those two dates he would have taken steps to reconvene the Medical Board and to allow the plaintiff an opportunity to be heard. In my opinion Mr. Lum had misunderstood the reason given by the plaintiff for not appearing before the Medical Board. The reason given was that not only was he in Malaysia for some time but also that during the relevant period he was staying away from his wife, was in hiding and did not communicate with her at all. Mr. Lum, by withdrawing the offer he had made to the plaintiff in his letter to him (AB60) was in one sense deciding the fate of the plaintiff because the Medical Board having already recommended his retirement on medical grounds, in the absence of any representation by the plaintiff, his fate was sealed. Although the recommendation of a Medical Board is in no way binding on the President when he decides whether or not the officer should be retired under section 7(2)(c) of the Pensions Act, it is very rarely that such a recommendation is rejected. In this case as no controverting evidence or other representation by the plaintiff was allowed to be placed before the President, the chances of the President rejecting the recommendation of the Medical Board were practically nil. Adverse legal consequences for the plaintiff were practically certain to flow directly from the report of the Medical Board. Before submitting the Medical Board's report to the President, Mr. Lum should have given the plaintiff an opportunity of correcting or controverting the medical evidence considered and relied upon by the Medical Board. In the situation that arose, Mr. Lum was under an implied duty to act fairly. It was not too late to do so. The rudiments of natural justice should have been observed.

Mr. Lum had admitted in his evidence that when he wrote AB60 he had made a tentative decision to retire the plaintiff but was prepared "to give him a chance to explain" and that if the plaintiff had been out of Singapore during the relevant period, he was even prepared to reconvene the Medical Board. In my opinion the withdrawal of the offer to the plaintiff to make representations before action was taken to retire him was unjustified. The application by the plaintiff through his solicitors for an opportunity to challenge the evidence presented before the Medical Board and to call evidence on his own behalf ought not to have been refused even though the reasons put forward by the plaintiff for not appearing before the Medical Board were unconvincing. The plaintiff had not yet been retired. The Medical Board could have been reconvened, as admitted by Mr. Lum. The plaintiff stated in his evidence that he had been under treatment of Dr. Paul Ngui, a consultant psychiatrist in private practice, and wanted to call him before the Medical Board to give evidence on his behalf. He should have been allowed to do so.

In my opinion, the action taken by Mr. Lum in shutting out the plaintiff altogether from making any representation whatever and forwarding the report of the Medical Board to the President with a request that the plaintiff be retired under section 7(2)(c) of the Pensions Act was manifestly unfair to the plaintiff and constituted a denial of natural justice. The breach of natural justice was a serious one and sufficient for the court to intervene and declare the purported retirement of the plaintiff a nullity. This finding was sufficient to dispose of this case but I propose to deal also with the other grounds relied upon by the plaintiff.

It was contended on behalf of the plaintiff that the requirements of section 7(2)(c) of the Pensions Act were not complied with in that no medical evidence was put before the President. The request for the plaintiff's retirement under section 7(2)(c) was made by the Permanent Secretary (Home Affairs) by letter dated August 19, 1975 (AB69) addressed to the Private Secretary to the President. It sets out the facts of the case and states that "in view of the recommendations of the Medical Board, may the President's approval be obtained to retire" the plaintiff and to pay him benefits under section 7(2)(c) of the Pensions Act. The letter also states that "the personal file, service record card and leave record of the officer are attached for reference". The letter was signed by Miss Charlotte Wong who admitted in her evidence that no medical evidence was forwarded with the letter but claimed that the Report of the Medical Board (AB52, AB53 and AB53A) was in the personal file of the plaintiff which was forwarded together with the letter. There was no evidence that the medical report was flagged.

One of the requirements of section 7(2)(c) is "medical evidence to the satisfaction of the President". The crucial question on this issue was that assuming that the President looked into the plaintiff's personal file and read the report of the Medical Board before making his decision to retire the plaintiff, was there sufficient compliance with the requirements of section 7(2)(c)? The Pensions Act does not provide for the retirement of an officer on medical grounds to be decided by anybody other than the President. The satisfaction is that of the President and he must be satisfied on medical evidence.

It is not necessary that the President should hear the evidence of witnesses but it is imperative that before making a decision the President must know the evidence that was given before the Medical Board. A decision made without consideration of and in ignorance of the evidence given before the Medical Board and based entirely on the opinion expressed by a Medical Board would be contrary to the principles of natural justice. The dangers of a hearing by an intermediary and not by the adjudicator are pointed out in *Reg* v. *Minister of Agriculture and Fisheries.*[6] Those to whom the legislature delegates the duty of deciding any particular matter should make the decision: *Hawks Bay Raw Milk Producers Co-operative Co. Ltd.* v. *New Zealand Milk Board.*[7] In *Jeff & Ors.* v. *New Zealand Dairy Products and Marketing Board,*[8] the Privy Council quashed the decision of a dairy board because the report of the investigating sub-committee on which the decision was founded had merely summarised the submissions made before it but had neither incorporated the evidence given before it nor had it summarised the evidence.

In this case, four witnesses give evidence before the Medical Board. Their evidence was not recorded by the Medical Board, not even in summary form. It is not known what evidence was given by the four witnesses. The report of the Medical Board states the opinion of the three members of the Board but does not state what evidence was given by the witnesses nor does it contain a summary of the evidence given. There was therefore too great a risk of the Medical Board missing out in its determination evidence in favour of the plaintiff or giving undue emphasis to evidence against him. The only material the President had before him when reaching his decision was the report of the Medical Board. The President came to a decision without knowledge of the evidence that had led the Medical Board to make its recommendation. In my opinion the Medical Board's report standing alone was not a sufficient compliance with the requirements of section 7(2)(c) of the Pensions Act because it was the only material the President had before him when reaching his decision. There was no medical evidence before him in the proper sense of the term. The President had before him the opinion of three doctors who never saw the plaintiff and not the evidence of material witnesses i.e. the evidence on which the three doctors formed their opinion.

The evidence given by the four witnesses who appeared before the Medical Board was given *ex parte*. It was vital evidence and it has not been disclosed, not even to this court. The plaintiff was entitled to know all the evidence given before the Medical Board but the evidence of the four witnesses was not disclosed to him on the ground that the Medical Board had made no record of it. If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is *prima facie* a breach of natural justice. See *Surinder Singh Kanda* v. *Government of Malaysia, supra.*

In *Jeff's* case, *supra,* the deciding authority was the New Zealand Dairy Products and Marketing Board and the Privy Council stated that "it may suffice for the Board to have before it and to consider an accurate summary of the relevant evidence and submissions if the summary adequately discloses the evidence and submissions of the Board". Unfortunately no such procedure was followed in this case. The report of the Medical Board did not state what the evidence was and the President reached his decision without consideration of and in ignorance of the evidence.

In my judgment there was in this case clearly a failure to comply strictly with the provisions of section 7(2)(c) of the Pensions Act.

There was one other ground relied upon by the plaintiff. It was contended that the provisions of section 7(2)(c) of the Pensions Act were not complied with because no certificate from the plaintiff's Head of Department was forwarded to the President as required by the said section. It was admitted by Mr. Lum, the Acting Permanent Secretary of the Ministry of Home Affairs that the plaintiff's Head of Department was the Commissioner of Police. It was also admitted that a Certificate from the Commissioner of Police was not sent to the President together with the letter (AB69) which requested that the President's approval be obtained to retire the plaintiff under section 7(2)(c) of the Pensions Act. The reason given by Miss Charlotte Wong who signed AB69 was that there was no form in use for such a certificate. Mr. Lum on the other hand stated that there was no certificate for the Commissioner of Police because the plaintiff had made allegations and complaints against the Commissioner of Police. This in my opinion was no excuse for non-compliance with a statutory procedural requirement. The Pensions Act does not prescribe a form to be used for the required certificate. Therefore a formal letter setting out the facts of the case and signed by the Commissioner of Police would have been sufficient compliance with the requirement of section 7(2)(c) of the Pensions Act. There was no such letter or certificate from the Commissioner of Police in this case. The omission, in my opinion, was a breach of express procedural requirement. The fact that a procedural breach occurred is decisive — see *Kanda's* case, *supra.*

For these reasons I held that the plaintiff's employment had not been validly terminated. His purported retirement under section 7(2)(c) of the Pensions Act was a nullity and he was entitled to a declaration that he was still an Inspector in the Singapore Police Force and was entitled to be remunerated as such.

Order accordingly.

Solicitors: *J.B. Jeyaretnam & Co.*